Habeas Corpus Law in the Ninth Circuit
After Mendoza v. Carey: A New Era?

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I. INTRODUCTION

To protect the innocent and punish the wicked, we as a society often choose to incarcerate criminals. By its very nature, incarceration dictates that certain prisoner rights be limited in order to achieve society’s purposes.1 The difficulty arises in striking a balance between serving the functions of incarceration and protecting the basic rights of the prisoner.2 On June 7, 2006, the United States Court of Appeals for the Ninth Circuit issued a split decision in Mendoza v. Carey3 that attempted to strike such a balance. The court granted an evidentiary hearing to an inmate in a habeas corpus proceeding,4 contrary to decisions in other jurisdictions,5 and in so doing encouraged non-English-speaking inmates to assert their right to post-conviction appeals. The court based its decision upon the inmate’s alleged inability to either access legal materials in a language in which he was fluent or receive assistance from a translator during the

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2 Id. at 462–63.
3 449 F.3d 1065 (9th Cir. 2006).
4 Id. at 1067.
5 See discussion infra Part V.B.
statutory period for filing habeas corpus appeals. The writ of habeas corpus is a constitutionally protected right, its purpose being, in the words of Chief Justice Marshall, "the liberation of those who may be imprisoned without sufficient cause." Given its importance, the Ninth Circuit's willingness to grant broader access to the writ is a proper step towards assuring that all prisoners, regardless of language spoken or national origin, are offered adequate access to its protections.

After a brief review in Part II of the current habeas corpus appeals practice following the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Part III of this Note will examine the factual and procedural history of Mendoza. Next, Part IV will analyze the case's majority and dissenting opinions. Finally, Part V contrasts Mendoza with factually similar cases in other jurisdictions and demonstrates that, even though the Ninth Circuit stands alone, its ruling strikes a proper balance between limiting abuse of the writ and ensuring that it remains available to all inmates who diligently pursue their rights.

II. HABEAS CORPUS LAW

Federal habeas corpus law is an unusual area of law, often misunderstood even by practitioners. Though technically a civil action, the Supreme Court of the United States has characterized habeas practice as "unique," only generally conforming to civil practice. Because habeas law follows neither criminal nor civil procedure, the substance and procedure of a typical habeas proceeding may well befuddle a casual observer.

One such confusing aspect involves which substantive grounds a habeas appeal may properly encompass. One might assume that a petition for a writ of habeas corpus is an extension or an appeal of the criminal action under which the petitioner was jailed, but that is not the case. Instead, habeas proceedings are initiated by inmates who believe that their continued imprisonment violates their federal constitutional rights. It is, therefore, not a means to attack ordinary procedural or substantive errors that occurred at trial; rather, errors alleged in a habeas pe-
tion must rise to constitutional proportions. For example, unless errors at trial were so substantial and prejudicial as to implicature a constitutional right of the petitioner, he or she may not use habeas to correct erroneous factual determinations, challenge the sufficiency of the evidence supporting a conviction, or challenge the admission of evidence. The writ of habeas corpus is instead a “procedural device for subjecting executive, judicial, or private restraints on liberty to judicial scrutiny.” For these reasons, a petition for writ of habeas corpus is distinct from an appeal of a criminal proceeding.

Procedurally, federal habeas practice can also prove confusing. The process begins when a prisoner petitions the federal district court that sentenced them for a writ of habeas corpus. Because the right to counsel does not reach civil proceedings such as habeas petitions, a petitioner must often research and draft his or her petition without legal assistance. The court may dismiss a petition for any number of reasons. In order to better determine the validity of the petitioner’s factual allegations, the court may schedule an evidentiary hearing at any time after the petition is filed. The court will then issue a ruling on the petition. If the court denies the writ, the petitioner must obtain a Certificate of Appealability in order to appeal the ruling. The end result of a successful petition ranges from a new sentencing hearing to the actual release of the prisoner, depending on the severity of the violations found.

This Note focuses on postconviction petitions for habeas relief to federal courts, whether authored by state or federal prisoners. Although the writ is available before a conviction, such actions are rare: federal courts nearly always require a petitioner to first exhaust his state court remedies. As a result, the vast majority of habeas actions brought in federal courts are postconviction actions brought by inmates in state or

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15. Id.
16. Id.
18. For a detailed analysis of federal habeas practice, see Federal Habeas Corpus Practice, supra note 12.
19. Id. § 69.
20. U.S. CONST. amend. VI.
22. See, e.g., Federal Habeas Corpus Practice, supra note 12, §§ 27, 86.
23. Id. § 86.
24. Id. § 110.
25. FED. R. APP. P. 22(b).
27. Federal Habeas Corpus Practice, supra note 12, § 7.
federal prisons.\textsuperscript{28} It is this type of habeas petition that was at issue in \textit{Mendoza}.\textsuperscript{29}

In the years preceding the 1996 enactment of the AEDPA, Congress sought to amend perceived inadequacies in habeas corpus law.\textsuperscript{30} Congressional observers had noticed for some years both a pattern of delayed filings and an increase in the number of filings of petitions for writs.\textsuperscript{31} At the time, there was no restriction as to when a prisoner could file a habeas petition,\textsuperscript{32} which resulted in the filing of a multitude of "stale" claims.\textsuperscript{33} Congress concluded that habeas petitioners were abusing the system.\textsuperscript{34} Political pressure to change habeas appeals increased following the conviction and pending execution of Timothy McVeigh for the bombing of the Oklahoma City Federal Building.\textsuperscript{35} Accordingly, Congress enacted the AEDPA.\textsuperscript{36}

The AEDPA encompasses a broad range of topics, including the streamlining of habeas and death penalty appeal procedures, the institution of mandatory victim restitution, and the implementation of various provisions regarding international terrorist acts.\textsuperscript{37} Specifically, the AEDPA applies a one-year limitation period to applications for a writ of habeas corpus by inmates incarcerated pursuant to a state court judgment.\textsuperscript{38} The statute does, however, allow for statutory tolling of that one-year period while a properly filed application for postconviction relief is pending.\textsuperscript{39}

Citing what it called an abuse of the habeas corpus practice, particularly in capital cases,\textsuperscript{40} Congress expressed an intention to limit delayed and repetitive filings,\textsuperscript{41} while nevertheless providing prisoners with adequate review "when [they] diligently pursue[] state remedies and applies for federal habeas review in a timely manner."\textsuperscript{42}

\begin{thebibliography}{99}
\bibitem{28} \textit{Id.} § 8.
\bibitem{29} See \textit{Mendoza} v. Carey, 449 F.3d 1065, 1066 (2006).
\bibitem{30} For a brief history of habeas corpus law prior to the AEDPA, see Bellamy, \textit{supra} note 10, at 3–10.
\bibitem{31} \textit{Id.} at 7–8.
\bibitem{32} \textit{Id.} at 11.
\bibitem{33} \textit{Id.} at 8.
\bibitem{34} \textit{Id.} at 10.
\bibitem{35} \textit{Id.}
\bibitem{36} Pub. L. No. 104-132, 110 Stat. 1214.
\bibitem{37} \textit{Id.} The many provisions of the AEDPA not relating to habeas corpus petitions are beyond the scope of this Note.
\bibitem{39} § 2244(d)(2).
\bibitem{41} \textit{Id.} at 9.
\bibitem{42} \textit{Id.}
\end{thebibliography}
In addition to the AEDPA’s tolling provision, courts have been willing to allow equitable tolling of the one-year limitation on the filing of habeas petitions.\(^43\) While the statute is silent regarding equitable tolling, a majority of courts allow it upon satisfaction of the extraordinary circumstances test,\(^44\) which requires extraordinary circumstances that were beyond the petitioner’s control.\(^45\) Because the extraordinary circumstances test necessitates a case-by-case factual analysis,\(^46\) the doctrine of equitable tolling has created “a complicated, inconsistent procedural morass that is difficult for the most knowledgeable legal scholar to understand.”\(^47\) From that morass arose *Mendoza*.

### III. The History of *Mendoza*

Carlos Mendoza, a California state prisoner, was sentenced to fourteen years in prison after pleading no contest to a charge of assault with a firearm.\(^48\) Mendoza did not appeal his conviction, which became final on August 21, 2001.\(^49\) He spent his first three months of incarceration at a reception center,\(^50\) where the law library contained no Spanish-language books.\(^51\) Mendoza alleged that guards told him that he could not begin any habeas proceedings until he arrived at his assigned prison.\(^52\) After three months at the reception center, he was assigned to Solano State Prison, where he again found no Spanish-language books or forms, no postings about the AEDPA time limit in any language, and no Spanish-speaking clerks or librarians that could assist him.\(^53\) Through conversations with other Spanish-speaking inmates in the prison yard, however, he was eventually able to locate a bilingual inmate who agreed to assist him in drafting his habeas petitions.\(^54\)

\(^{43}\) Bellamy, *supra* note 10, at 24.

\(^{44}\) *Id.* at 27.

\(^{45}\) Calderon v. U.S. Dist. Court for the Cent. Dist. of Cal., 128 F.3d 1283, 1288 (9th Cir. 1997).

\(^{46}\) Whalem/Hunt v. Early, 233 F.3d 1146, 1148 (9th Cir. 2000).


\(^{49}\) *Id.* Mendoza’s conviction became final when he did not file an appeal within sixty days of judgment. *Id.*

\(^{50}\) *Id.* The California Department of Corrections and Rehabilitation sends its incoming prisoners to reception centers at various locations around the state before assigning them to a permanent location. Reception Center, http://www.cdcr.ca.gov/Divisions_Boards/Adult_Operations/Reception_Center.html (last visited May 6, 2008).

\(^{51}\) *Mendoza*, 449 F.3d at 1067.

\(^{52}\) *Id.*

\(^{53}\) *Id.*

\(^{54}\) *Id.*
Mendoza finally filed his first petition for a writ of habeas corpus on May 14, 2003, nearly twenty-one months after his conviction became final.\(^{55}\) Over the next year, with the help of another bilingual inmate, he filed a second habeas petition in the Superior Court of California, a petition in the California Court of Appeals, and two petitions in the California Supreme Court.\(^{56}\) Each of these petitions was denied, with the final denial occurring on March 17, 2004.\(^{57}\) Mendoza then focused his efforts on the United States District Court for the Central District of California, filing a habeas petition with that court on April 3, 2004.\(^{58}\)

On April 26, 2004, the district court required Mendoza to show cause as to why the court should not dismiss his lone remaining petition due to its filing more than one year after his conviction became final.\(^{59}\) In the order, the district court stated that Mendoza had failed to provide any explanation for the lengthy delay in filing, other than allegations that he was hindered by his lack of access to Spanish-language law books.\(^{60}\) Mendoza responded on May 24, 2004, again with the help of a bilingual inmate, that the prison law library possessed no books written in Spanish, no Spanish-English legal dictionaries, and no postings about the AEDPA in any language.\(^{61}\) He included a declaration detailing his inability to obtain Spanish-language legal materials at the reception center or at Solano State Prison.\(^{62}\) Mendoza also submitted forty-seven identical form declarations, signed by Spanish-speaking inmates, which stated the library possessed no books in Spanish that could assist the inmate in pursuing legal action, and that the clerks and librarians did not speak Spanish.\(^{63}\) Finally, Mendoza asserted that he would have challenged his sentence within a year if he had seen any notice of the one-year limitations period.\(^{64}\)

After reviewing Mendoza’s response to the Order to Show Cause, a magistrate judge recommended that Mendoza’s habeas petition be dismissed as untimely.\(^{65}\) The magistrate first ruled that statutory tolling under section 2244(d)(2) did not apply in this case because Mendoza had already passed the one-year limitation period before he petitioned the

\(^{55}\) Id.
\(^{56}\) Id.
\(^{57}\) Id.
\(^{58}\) Id.
\(^{59}\) Id.
\(^{60}\) Id.
\(^{61}\) Id.
\(^{62}\) Id.
\(^{63}\) Id. at 1068.
\(^{64}\) Id.
\(^{65}\) Id.
state for habeas relief. The magistrate then ruled that Mendoza’s “general lack of legal knowledge, indigenc[e], and limited English skills are not external factors or extraordinary circumstances beyond his control that made it impossible for him to file a timely petition.” The district court adopted the report and recommendation of the magistrate judge in full, dismissed Mendoza’s habeas petition as untimely, and declined to issue a Certificate of Appealability upon Mendoza’s timely appeal. Nevertheless, the Ninth Circuit granted a Certificate of Appealability on (1) whether Mendoza was entitled to equitable tolling based on his inability to comprehend English and the lack of Spanish-language materials in the library and (2) whether the district court erred in failing to hold an evidentiary hearing on the issue.

IV. THE NINTH CIRCUIT’S RULING IN MENDOZA

On October 17, 2005, a three-judge panel of the Ninth Circuit heard argument on the issues of equitable tolling and the failure to hold an evidentiary hearing. A split decision was filed on June 7, 2006, with the majority deciding that Mendoza’s factual allegations were sufficient to warrant remand to the district court for a factual hearing.

A. The Majority Opinion

Because it was an issue of first impression, the majority opinion focused the bulk of its analysis on whether language difficulty could be sufficient to equitably toll the one-year window for habeas petitions. The court applied a de novo standard of review to the denial of the petition for writ of habeas corpus; it applied an abuse of discretion standard to the denial of an evidentiary hearing. In cases involving equitable tolling, the petitioner bears the burden of showing both diligent pursuit of his or her rights and extraordinary circumstances that stood in the way of that pursuit. This burden is intentionally set very high in order to encourage prisoners to file habeas petitions promptly, thus effectuating a central purpose of the AEDPA.

66. Id.
67. Id.
68. Id.
69. Id.
70. Id. at 1065.
71. Id.
72. Id. at 1069.
73. Id. at 1068.
75. Guillory v. Roe, 329 F.3d 1015, 1018 (9th Cir. 2003).
After reviewing the facts, the panel held that an evidentiary hearing before the district court was warranted where a prison law library lacked Spanish-language legal materials and a petitioner was unable to obtain translation assistance before the one-year deadline. Consequently, if Mendoza could show at the evidentiary hearing that his allegations were true, he would be entitled to equitable tolling of the statutory filing period.

In reaching its holding, the court necessarily looked to other cases involving equitable tolling for guidance. In Whalem/Hunt v. Early, the court held that the unavailability of the statutory text of the AEDPA in a prison library raised enough of a question of an extraordinary barrier to warrant remand for further development of the factual record. The petitioner in that case alleged that his lack of access to the AEDPA text prevented him from learning of the one-year deadline and therefore from filing his habeas petition before that deadline. The court held that the state prison's failure to provide the prisoner with access to the AEDPA could be an extraordinary barrier to the petitioner's efforts to timely file a habeas petition.

Because Whalem/Hunt was not directly on point, inasmuch as it involved the failure to provide legal materials generally and did not raise the specific issue of language difficulty, the court also looked outside its own jurisdiction, examining the case of Cobas v. Burgess. In that case, the Sixth Circuit held that a petitioner's inability to speak, write, or understand English, in and of itself, did not automatically justify equitable tolling. The petitioner in Cobas had written a detailed letter to his counsel in English, demonstrating that he at least had access to a translator with whom he was able to effectively communicate.

The Mendoza court built upon this analytical framework. Even though the Cobas court had ultimately denied relief, its reasoning left open the possibility that a non-English speaker who could not find a willing translator might qualify for equitable tolling. Following the precedent established by the Cobas and the Whalem/Hunt decisions, the Ninth

76. Mendoza, 449 F.3d at 1071.
77. Id.
78. Id. at 1069–70.
79. 233 F.3d 1146, 1148 (9th Cir. 2000).
80. Id.
81. Id.
82. 306 F.3d 441 (6th Cir. 2002).
83. Id. at 444.
84. Id.
Circuit held that Mendoza “alleged facts that, if true, may entitle him to equitable tolling.”

The court also noted, however, that the record before it failed to clearly show that, even if the facts that Mendoza alleged were true, he had diligently pursued his rights. Because the district court had not investigated Mendoza’s allegations regarding his inability to learn of the AEDPA’s limitations period, the Mendoza court concluded that the appropriate tack was to remand the case for an evidentiary hearing that would further develop the record.

B. The Dissenting Opinion

The dissenting judge offered a different analysis of the facts alleged by Mendoza. Circuit Judge Kleinfeld first noted that Mendoza was born in America and had never alleged that he read Spanish. In addition, Mendoza had nine months at Solano State Prison to find a bilingual inmate who was willing to assist him. Given the demographics at that institution, it was unlikely that Mendoza had struggled to find such help.

As a legal matter, the dissent disputed the majority’s reading of the applicable precedent. To begin with, the Court had previously rejected the argument that prisoners have a right to access a law library at all, let alone one providing materials in Spanish. The dissent also distinguished Whalem/Hunt, the difficulty for the petitioner in that case was his inability to learn the statute of limitations for habeas appeals due to dated legal materials. The dissent argued that that situation differed significantly from Mendoza’s, where the information was available to

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86. Id. at 1071.
87. Id. at 1071 n.6.
88. Id. at 1071. At that hearing, the prosecution would also get its first opportunity to rebut Mendoza’s contentions. Id.
89. Id. at 1072 (Kleinfeld, J., dissenting). The majority contended that it was safe to infer that Mendoza read Spanish from the statements that he made in his declaration. Id. at 1066 n.1 (majority opinion). The dissent reasoned, however, that when a person was born and raised in America, it is “most likely” that he does not read Spanish, and that anyone who had filed as many affidavits as Mendoza did would surely file one stating that he could read Spanish, if he could do so without committing perjury. Id. at 1072 n.2 (Kleinfeld, J., dissenting).
90. Id. at 1072 (Kleinfeld, J., dissenting).
91. Id. The dissent specifically cited the forty-seven declarations of Spanish-speaking inmates that Mendoza filed for the show-cause hearing as evidence that Mendoza was in contact with several bilingual inmates. Id. at 1073.
92. Id. at 1074.
93. Id. (citing Kane v. Garcia Espitia, 546 U.S. 9 (2005)).
94. Id.
him if he could find a bilingual inmate willing to translate. The dissent thus argued that the applicable precedent supported the dismissal of Mendoza’s petition.

The dissent also called the majority’s reliance on Cobas misguided. In an institution such as Solano State Prison, Mendoza should have had little difficulty finding a bilingual inmate willing to translate for him. If such an inmate were available, Mendoza’s claim should fail under the reasoning of that case.

Finally, the dissent concluded by distinguishing the “real problem” from the “fake problem” underlying the case. The “real problem,” it explained, is that inmates have little hope of understanding and properly applying the myriad of “subtleties and intricacies” of habeas law, because they are not entitled to appointed counsel for habeas petitions. On the other hand, the “fake problem” asserted by the petitioner was the lack of a Spanish-language legal library at Solano State Prison; Mendoza had simply failed to show that the presence of such materials would have made a difference. The dissent thus concluded that Mendoza failed to meet the high threshold required for a granting of equitable tolling.

C. Reconciling the Majority and Dissenting Opinions

Upon further analysis, the differences between the opinions of the majority and the dissent are not as pronounced as they may seem. Both opinions rest on a similar reading of the law, and both rely on Cobas and Whalem/Hunt to support that reading. Both opinions express a willingness to grant equitable tolling in cases where language barriers in fact prevent the petitioner from diligently pursuing his or her rights. The difference lies in the judges’ readings of the facts of this specific case. While the majority was willing to grant Mendoza the opportunity to correct any deficiencies in the record through remand to the district court for

96. Mendoza, 449 F.3d at 1074 (Kleinfeld, J., dissenting).
97. Id. at 1072.
98. Cobas v. Burgess, 2002 FED App. 0334P (6th Cir.) (quoting Dunlap v. United States, 2001 FED App. 0150P (6th Cir.)) (holding that “the existence of a translator who can read and write English and who assists a petitioner during his appellate proceedings implies that a petitioner will not have a reasonable cause for remaining ignorant of the legal requirement for filing his claim”).
99. Mendoza, 449 F.3d at 1074 (Kleinfeld, J., dissenting).
100. Id. at 1074–75.
102. Mendoza, 449 F.3d at 1075 (Kleinfeld, J., dissenting). The dissent nevertheless agreed that an inmate who is not American-born, or who understands and reads a more exotic language that no other prisoner speaks, may in fact be entitled to equitable tolling. Id.
103. Id.
an evidentiary hearing, the dissent concluded that there was insufficient evidence to warrant such a remand.

The conclusion reached in *Mendoza* does not require all jails in the Ninth Circuit to provide native-language legal materials to inmates who demand such materials. The holding merely acknowledged that where language difficulties presented an extraordinary circumstance that prevented the petitioner from timely filing a habeas petition, he or she deserves an opportunity to show diligent pursuit of legal rights despite that impediment. If the petitioner can demonstrate diligent pursuit, he or she may be entitled to an equitable tolling of the habeas appeals period.

*Mendoza* has significantly impacted habeas practice throughout the Ninth Circuit and beyond; as of April 10, 2008, sixty-eight judicial opinions have cited it. While many of these decisions mention *Mendoza* only briefly, some focus on facts substantially similar to those in *Mendoza*, with the court remanding in three of those cases. As a result, while *Mendoza* does not stand for the proposition that all inmates have a direct right to access legal materials in their native language, it does require a thorough analysis of habeas petitions that request equitable tolling because of language difficulties.

V. *MENDOZA*: COMING OUT OF LEFT FIELD

The Ninth Circuit, in *Mendoza*, became the first circuit to remand a habeas appeal for further findings on the premise that language difficulties could create an extraordinary barrier to the filing of a petition for habeas corpus relief. Decisions from other circuits and even from the Supreme Court show that the holding in *Mendoza* represents a departure from a nationwide trend denying a right both to access legal materials in general and to access legal materials in a language one can comprehend.

104. *Id.* at 1071, n.6 (majority opinion).
105. *Id.* at 1075 (Kleinfeld, J., dissenting).
106. See *id.* at 1071 (majority opinion).
107. *Id.*
108. *Id.*
109. See, e.g., Johnson v. Chandler, 224 F. App’x 515 (7th Cir. 2007); Pelayo v. Hall, 209 F. App’x 741 (9th Cir. 2006); Pham v. Ryan, 203 F. App’x 769 (9th Cir. 2006); Nguyen v. Lamarque, 203 F. App’x 762 (9th Cir. 2006).
110. See, e.g., *Pham*, 203 F. App’x at 770 (holding that where petitioner is illiterate and unable to speak English, and where the prisoner who had previously assisted him in filing court documents had been transferred, the petitioner was entitled to additional time in which to answer a motion to dismiss his habeas petition).
111. *Mendoza*, 449 F.3d at 1071.
112. See discussion infra Part V.B.
This Part begins with an analysis of the development of rulings on prisoners’ access to legal materials (a relatively recent phenomenon) as a whole. It then focuses on decisions in analogous cases from other circuits. This analysis will show that the Ninth Circuit is alone in allowing equitable tolling of the habeas filing period in these situations. The Part concludes that, although it may stand alone among the circuit courts, the Ninth Circuit has crafted a standard that protects access to the writ of habeas corpus for all prisoners.

A. The Prisoner’s “Right” to Access Legal Materials Is a Recent Development

While the Constitution grants prisoners no express right to access legal materials, the Court has often interpreted the requirement that a prisoner have adequate and meaningful access to the courts to include access to legal materials.\(^\text{113}\) Jurisprudence in this area stems from the Court’s decision in \textit{Bounds v. Smith}, in which it acknowledged that prisoners have a constitutional right to access the courts in an adequate, effective, and meaningful manner.\(^\text{114}\) The \textit{Bounds} Court held that such access to the legal system requires that prison authorities assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.\(^\text{115}\)

The Court later narrowed the \textit{Bounds} rule in \textit{Lewis v. Casey}.\(^\text{116}\) In that case, the Court clarified that \textit{Bounds} did not create a direct right to a law library or legal assistance; rather, that decision merely affirmed the right of access to the courts.\(^\text{117}\) Thus, to demonstrate an injury under \textit{Bounds} and \textit{Lewis}, an inmate must prove that the alleged shortcomings in the prison library or legal assistance program hindered the inmate’s efforts to pursue a nonfrivolous legal claim.\(^\text{118}\) For example, even if a petitioner is denied access to legal resources, he or she must demonstrate that this lack of access led to his or her inability to put forth a nonfrivolous claim.\(^\text{119}\)

As a practical matter, courts differ drastically in their understandings of the standard set forth by the \textit{Bounds} and \textit{Lewis} decisions. For example, in \textit{Green v. Ferrell}, the Fifth Circuit held that a prison’s practice

\(^\text{113}\) Blum, supra note 1, at 474.
\(^\text{115}\) Blum, supra note 1, at 459–60.
\(^\text{117}\) \textit{Id.} at 351.
\(^\text{118}\) \textit{Id.} at 351–53.
\(^\text{119}\) \textit{Id.}.
of limiting prisoners to checking out only two law books at a time, twice a week, denied the prisoners meaningful access to the courts. But in *Wilson v. Bruce*, the court held that such access is not denied merely by a prison’s implementation of reasonable restrictions on access to the law library. Because meaningful access must be ascertained on a case-by-case basis, this standard has been interpreted in a myriad of ways.

**B. Post-AEDPA Case Law on Access to Legal Materials Contradicts Mendoza**

Since the 1996 enactment of the AEDPA, several cases have interpreted portions of that statute relating to habeas filing period; the decisions have almost uniformly denied equitable tolling. These rulings show that other courts tend to allow equitable tolling only in extremely limited circumstances, perhaps valuing judicial efficiency over an assurance of access to the constitutionally guaranteed writ of habeas corpus. For example, in *Gibson v. Klinger*, the petitioner argued that the one-year filing limitation period should have tolled while he was pursuing an appeal in the Oklahoma state court system. The Tenth Circuit held that his inability to secure a copy of the AEDPA was not a sufficient impediment to justify equitable tolling. Equitable tolling, the court stated, is permitted only in “rare and exceptional circumstances,” such as when a prisoner is actually innocent, when another party’s conduct prevents a prisoner from timely filing, or when a prisoner actively pursues judicial remedies but files a defective pleading during the statutory period. No such circumstances existed in *Gibson*. The court concluded that “a claim of insufficient access to relevant law, such as AEDPA, is not enough to support equitable tolling,” and affirmed the dismissal of the petition.

Similarly, the Sixth Circuit has been reluctant to grant equitable tolling of the habeas filing period. In *Cobas v. Burgess*, the court affirmed the district court’s dismissal of a petition for a writ of habeas corpus. The petitioner conceded that, because it was not filed within one year of the date that his conviction became final, his petition was

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120. 801 F.2d 765, 773 (5th Cir. 1986).
122. For a more substantive view of the different rulings on this issue, see Blum, *supra* note 1, at 469–97.
123. 232 F.3d 799, 802 (10th Cir. 2000).
124. *Id.* at 808.
125. *Id.* (quoting *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998)).
126. *Id.*
127. *Id.*
128. 2002 FED App. 0334P (6th Cir.).
time-barred. He contended, however, that the doctrine of equitable tolling applied, because he was born and raised in Cuba and was unable to understand, read, or write the English language.\textsuperscript{129} Pointing to the petitioner’s proven ability to gain access to the courts, as demonstrated by previous pleadings that he filed in state court appeals, the court held that an inability to speak, write, or understand English, in and of itself, does not automatically give reasonable cause for equitable tolling.\textsuperscript{130} Although the court acknowledged numerous mistakes in the petitioner’s state court pleadings,\textsuperscript{131} it reasoned that, because he had successfully filed them, he was capable of understanding the legal requirements for filing his habeas petition.\textsuperscript{132} The result in Cobas exemplifies the unwillingness of most circuit courts to apply equitable tolling in habeas filing period cases.

The Eleventh Circuit has also declined to apply equitable tolling to a habeas appeal when a petitioner has alleged language difficulties. In United States v. Montano, the petitioner appealed the denial of his motion to file an untimely motion for review of his sentence under 28 U.S.C. § 2255, the statutory equivalent of the AEDPA for federal prisoners.\textsuperscript{133} He alleged that he was actually innocent and that language difficulties prevented him from discovering the possibility of challenging his conviction in federal court before the one-year limitation period expired.\textsuperscript{134} Relegating this argument to a mere footnote, the court stated that language difficulties do not constitute “extraordinary circumstances” worthy of equitable tolling.\textsuperscript{135} The Montano court’s unwillingness to devote substantial analysis to the petitioner’s language argument demonstrates that it believed that language barriers are not relevant to equitable tolling.

The Fourth Circuit has also denied equitable tolling when a petitioner has alleged language difficulties in challenging his conviction under § 2255. In United States v. Sosa, the petitioner argued that the court should toll the one-year appeal period because language difficulties had impeded his ability to comply with the statutory deadline.\textsuperscript{136} The court,

\textsuperscript{129} Id.
\textsuperscript{130} Id.
\textsuperscript{131} Id.
\textsuperscript{132} Id.
\textsuperscript{133} 398 F.3d 1276, 1277 (11th Cir. 2005).
\textsuperscript{134} Id. at 1280 n.5.
\textsuperscript{135} Id.
\textsuperscript{136} 364 F.3d 507, 512 (4th Cir. 2004). The petitioner provided four other grounds supporting his claim for equitable tolling: (1) he had misunderstood the resetting of the statutory period after the dismissal of his first motion; (2) he was actively litigating a motion to reduce his sentence during the period; (3) it took seven months for the district court to rule on his first motion; and (4) he had a mental condition which justified equitable tolling. Id.
however, refused to invoke the doctrine, citing the numerous pleadings filed by the petitioner as evidence that he possessed sufficient proficiency in the English language to be held to the statutory deadline.\textsuperscript{137}

As the decisions in \textit{Gibson}, \textit{Cobas}, \textit{Montano}, and \textit{Sosa} show, most jurisdictions employ a strong presumption against equitable tolling when language barriers caused a defendant to miss the AEDPA’s filing deadline.\textsuperscript{138} Courts in these jurisdictions afford greater weight to Congress’s desire to limit abuse of habeas appeals than to a petitioner’s right to have adequate access to the writ.\textsuperscript{139} Moreover, the Supreme Court has stated—in a footnote—that it has never decided whether equitable tolling should even apply to the AEDPA’s statute of limitations.\textsuperscript{140} Accordingly, a presumption against equitable tolling has evolved when language barriers are involved; in fact, the very right to equitable tolling of the AEDPA’s limitations period may prove illusory.

The Ninth Circuit, however, countered this trend, in a case decided before \textit{Mendoza}, by permitting equitable tolling when a petitioner lacked access to legal materials. In \textit{Whalem/Hunt}, the law library in the petitioner’s prison did not receive legal materials describing the AEDPA until June 1998, nearly two years after Congress enacted it, and well after the petitioner’s window to petition for habeas relief closed.\textsuperscript{141} Reversing the district court’s dismissal of the petition as untimely, the panel remanded the case for consideration of whether the petitioner had a valid reason for not meeting the one-year deadline that would entitle him to equitable tolling.\textsuperscript{142} In a concurring opinion, Circuit Judge Tashima stated that “the inability to learn and be guided by such critically important procedural rules as the governing limitations period” might be a sufficient reason to equitably toll.\textsuperscript{143} This decision opened the door for the Ninth Circuit’s later expansion of the doctrine to include language difficulties in \textit{Mendoza}.\textsuperscript{144}

Decisions from other circuits and from the Supreme Court tend to limit equitable tolling, especially in circumstances involving language barriers. Under these cases, language difficulties do not warrant equitable tolling because they are not sufficient impediments to a prisoner’s right to access the courts. The Ninth Circuit, however, has followed a different path, by laying the groundwork in \textit{Whalem/Hunt}, and then holding in

\footnotesize{
\begin{itemize}
\item[137.] \textit{Id.} at 512–13.
\item[138.] See discussion \textit{supra} Part V.B.
\item[139.] See discussion \textit{supra} Part V.B.
\item[140.] Pace v. DiGuglielmo, 544 U.S. 408, 418 n.8 (2005).
\item[141.] \textit{Whalem/Hunt} v. Early, 233 F.3d 1146, 1147 (9th Cir. 2000).
\item[142.] \textit{Id.} at 1148.
\item[143.] \textit{Id.} at 1149 (Tashima, J., concurring).
\item[144.] \textit{Mendoza} v. Carey, 449 F.3d 1065, 1069 (9th Cir. 2006).
\end{itemize}}
Mendoza, that the inability to access either legal materials in one’s language or the help of a translator can provide a sufficient ground for the equitable tolling of the statutory limitations period for postconviction relief.

C. Mendoza Properly Protects the Habeas Corpus Rights of All Inmates

The Mendoza court’s concern with ensuring equal access to the writ of habeas corpus properly reflects the writ’s important role in protecting the rights of prisoners, while still addressing the concerns with abuse of the system that led to the passing of the AEDPA.\textsuperscript{145} Without the freedom to make determinations regarding equitable tolling, the one-year statutory limitation period created by the AEDPA goes too far in restricting the right to habeas appeal.\textsuperscript{146} Although the Court had summarily rejected the practice of limiting the right to habeas appeal based upon the amount of time that had passed between conviction and filing of a petition,\textsuperscript{147} Congress later imposed just such a restriction in the AEDPA. Equitable tolling is thus the only mechanism available to the judiciary to protect the habeas rights of prisoners.

The court in Mendoza demonstrated a proper use of equitable tolling. Granted, the holding from Mendoza may lead to more petitioners requesting equitable tolling in the Ninth Circuit and may thus place an increased burden on judicial resources within the circuit. Because Mendoza only allows tolling in limited circumstances, however, this increase in habeas petitions should remain well below the number of habeas petitions filed in the years preceding the enactment of the AEDPA, when petitioners were allowed to file for habeas relief indiscriminately.\textsuperscript{148} The ruling in Mendoza, therefore, strikes the correct balance between protection of the right of equal access to the writ of habeas corpus and prevention of abuse of the habeas procedure.

VI. CONCLUSION

Through its holding in Mendoza, the Ninth Circuit distanced itself from the nationwide trend against granting equitable tolling when a petitioner alleges an inability to file a timely petition for habeas relief due to language difficulties. The court plainly established that, in the Ninth Circuit, a Spanish-speaking prisoner’s allegations that his or her law library possessed no Spanish books, no Spanish-English legal dictionaries, and

\textsuperscript{145} Bellamy, supra note 10, at 53.
\textsuperscript{146} Id. at 54.
\textsuperscript{148} See supra notes 30–36 and accompanying text.
no postings about the AEDPA in any language can suffice to equitably toll the AEDPA’s limitations period.\(^{149}\) This holding properly moves away from thirty years of jurisprudence questioning not only whether petitioners have a right to access legal materials in their language of fluency but also whether prisoners have a right to access legal materials at all.\(^{150}\)

Because the *Mendoza* court created the opportunity for a more thorough review of habeas petitions impeded by language difficulties, the writ of habeas corpus in the Ninth Circuit better protects the constitutional rights of all inmates, not just those who speak English proficiently. The court properly placed a premium on the constitutional guarantee of access to the writ of habeas corpus, and its holding wisely harmonized this mandate and Congress’s desire to limit abuses of the procedure affording such access.

\(^{149}\) *Mendoza*, 449 F.3d at 1067.